## **United States Department of Labor Employees' Compensation Appeals Board**

	)
C.M., Appellant	)
	)
and	) <b>Docket No. 17-0310</b>
	) <b>Issued: February 15, 2017</b>
DEPARTMENT OF THE NAVY, U.S. NAVAL	)
ACADEMY, Annapolis, MD, Employer	)
	)
Appearances:	Case Submitted on the Record
Appellant, pro se	
Office of Solicitor, for the Director	

## **ORDER REMANDING CASE**

## Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge COLLEEN DUFFY KIKO, Judge

On November 23, 2016 appellant filed a timely appeal from an August 22, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as untimely filed and insufficient to demonstrate clear evidence of error. The Board docketed the appeal as No. 17-0310.

The Board has duly considered this matter and finds that the case is not in posture for decision. On January 7, 2003 appellant, then a 36-year-old painter, filed a traumatic injury claim (Form CA-1) alleging that on November 26, 2002 she sustained pinched nerves in both shoulders and her neck due to repairing a ceiling for painting. OWCP accepted the claim for cervical strain and aggravation of cervical degenerative intervertebral disc.

On August 25, 2011 appellant filed a claim for a schedule award. By decision dated April 11, 2012, OWCP granted appellant a schedule award for one percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity, which ran for 5.76 weeks. By decision dated August 9, 2012, an OWCP hearing representative set aside the schedule award and remanded the case to OWCP to correctly identify the parts of the body sustaining permanent impairment. By decision dated August 15, 2012, OWCP granted appellant a schedule award for one percent permanent impairment of the right upper extremity and one percent permanent impairment of the left upper extremity.

On May 25, 2016 OWCP received appellant's request for reconsideration of the August 15, 2012 impairment rating. Appellant contended that her condition had worsened over the years. In support of her request, she submitted an October 27, 2011 report by Dr. William Tham, a treating Board-certified physiatrist. Using Table 17-2 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed.), Dr. Tham determined that appellant had 24 percent permanent impairment of the cervical spine.

In schedule award cases, a distinction is made between an application for an additional schedule award and a request for reconsideration of the existing schedule award. When a claimant is asserting that the original award was erroneous based on her medical condition at that time, this is a request for reconsideration. A claim for an additional schedule award may be based on new exposure to employment factors or on the progression of an employment-related condition, without new exposure, resulting in greater permanent impairment.<sup>1</sup>

The Board finds that appellant alleged that her accepted cervical condition worsened and submitted new medical evidence regarding her current condition. The Board has repeatedly held that a claimant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing the possible progression of an employment-related condition resulting in permanent impairment or increased impairment.<sup>2</sup> The Board finds, therefore, that OWCP erroneously issued a denial of appellant's request for reconsideration under the clear evidence of error standard. On remand, OWCP should review the medical evidence and issue an appropriate decision regarding her request for an increased schedule award.

<sup>&</sup>lt;sup>1</sup> See B.K., 59 ECAB 228 (2007); Candace A. Karkoff, 56 ECAB 622 (2005).

<sup>&</sup>lt;sup>2</sup> See Linda T. Brown, 51 ECAB 115 (1999); Paul R. Reedy, 45 ECAB 488 (1994); see also B.K., id. (where it was evident that the claimant was seeking a schedule award based on new and current medical evidence, OWCP should have issued a merit decision on the schedule award claim rather than adjudicate an application for reconsideration).

**IT IS HEREBY ORDERED THAT** the August 22, 2016 of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this order of the Board.

Issued: February 15, 2017

Washington, DC

Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board